

of claim <sup>44</sup>~~68~~, and

*B2 could*

(b) recovering the protein from the host cell culture.--

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**Remarks**

**I. Amendment of the Claims.**

Originally filed claims 17-19 and 23-24 and new claims 25-79 will be pending upon entry of this amendment.

Claims 1-16 and 20-22 have been canceled in favor of new claims 25-79 in order to correct typographical errors and to more particularly point out and distinctly claim the subject matter Applicants regard as the invention. Applicants submit that the subject matter of new claims 25-79 falls within the scope of Group II, as defined by the Examiner in the Office Action dated June 27, 2000. New claims 25-79 find support in the claims as originally filed and throughout the specification. Thus, no new matter has been introduced.

Particularly, support for new claims 25-28 is found, for example, at page 14, lines 23-24. Support for new claims 34-37 is found, for example, at page 19, lines 10-16; and at page 20, line 26 through page 21, line 3. Support for new claims 43-46 and 52-55 is found, for example, at page 12, lines 24-28; and at page 21, lines 12-20. Support for new claims 61-62 is found, for example, at page 21, line 23 through page 22, line 2. Support for new claims 68-74 is found, for example, at page 21, lines 23-29. Support for new claims 29-33, 38-42, 47-51, 56-60, 63-67, and 75-79 is found, for example, at page 10, lines 9-28; at page 20, lines 14-24; at page 28, line 24 through page 29 line 8; at page 31, lines 3-9; and at page 32, line 8 through page 33, line 13.

Thus, no new matter has been added by way of amendment. Entry of the above amendment is therefore respectfully solicited.

## **II. The Restriction Requirement.**

The Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-VII. In response, Applicants provisionally elect, *with traverse*, Group II represented by originally filed claims 14-16 and newly added claims 25-79 for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final.

Applicants respectfully traverse the restriction requirement as it applies to Groups I-VII. As the Examiner points out, polynucleotides, polypeptides, and antibodies are patentably distinct inventions. However, even where two patentably distinct inventions appear in a single application, restriction remains improper unless it can be shown that the search and examination of both groups would entail a "serious burden". *See*, M.P.E.P. § 803. In the present situation, no such showing has been made. Indeed, no arguments have been made explaining why it would impose an undue burden to examine Groups I-VII together.

Applicants submit that a search of the polynucleotide claims would provide useful information for Groups II-VII. For example, in many if not most publications, where a published nucleotide sequence contains an open reading frame, the authors also routinely include polypeptides. Thus, the searches for polynucleotides and polypeptides commonly overlap. Thus, the search and examination of a polynucleotide, its corresponding deduced polypeptide sequence would not entail a serious burden. Thus, the searches for Groups II-VII would be overlapping.

Accordingly, as applied to Groups I-VII, the restriction requirement should be withdrawn.

### III. Conclusion.

Applicants respectfully request that the above-made amendments and remarks be entered and made of record in the file history of the instant application. Applicants believe that this application is in condition for substantive examination. If in the opinion of the Examiner, a telephone conference would expedite prosecution, the undersigned can be reached at the telephone number indicated below.

If there are any fees due in connection with the filing of this paper, please charge the fees to Deposit Account No. 08-3425.

Respectfully submitted,

Dated:

July 27, 2000

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